

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

THOMAS COOK)	
D/B/A HASSETT GUN SUPPLY)	
Petitioner)	Civil Action No. 5:03CV00042
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
ARTHUR W. HERBERT,)	
Respondent.)	

Thomas Cook petitions this court pursuant to 18 U.S.C. § 923(f)(3) for a de novo judicial review of a decision by the Bureau of Alcohol, Tobacco, and Firearms (“ATF”) to revoke his license as a dealer in firearms. Respondent, the Director of Industry Operations for the ATF, moves for summary judgment. Because the court finds that the undisputed facts establish that Cook committed willful violations of the laws regulating the firearms industry, the court grants Herbert’s motion and dismisses the petition.

I.

From 1976 until the present litigation, Cook operated Hassett Gun Supply as a federally licensed firearm dealer in Waynesboro, Virginia. In August 2000, ATF Inspector Jeff Foster conducted a compliance inspection of Hassett Gun Supply. During this inspection, Foster discovered that although Cook’s Firearms Acquisition and Disposition Record (“A & D Book”) indicated that 717 firearms were on the business premises, a physical inventory discovered only 470 weapons, a difference of 247 firearms. Foster discovered hundreds of other discrepancies, omissions, and errors in Cook’s records, many involving ATF Form 4473 (“Form 4473”), a form that each gun purchaser is required to complete.

Due to the high number of record-keeping violations,¹ the ATF held a warning conference with Cook on October 18, 2000. ATF representatives discussed the violations and possible corrective measures with Cook to ensure compliance with the Gun Control Act (“GCA”) and attendant regulations. The ATF instructed Cook that every firearm sold or transferred must be recorded in the A & D Book. The ATF advised Cook to reconcile his records with his inventory and informed him that ATF inspectors would return in one year to conduct another compliance inspection. Cook was further informed that if his records were not corrected or if new violations were discovered, the ATF would attempt to revoke his license.

On August 27, 2001, ATF inspectors commenced another compliance inspection of Cook’s business. This inspection uncovered numerous violations involving the Form 4473s and the A & D Book. In particular, ATF inspectors discovered 147 firearms had open dispositions in the A & D Book but were not located in the physical inventory. Ninety-two of these missing firearms were among the 247 firearms the ATF had documented as missing the previous year, and the ATF inspectors were unable to locate fifteen firearms acquired in the past year. The inspectors repeatedly asked Mr. Cook for information concerning the location of these 147 firearms, but Mr. Cook informed the inspectors he did not have the time to assist the inspection.

The ATF inspectors found Cook’s errors to be willful violations of the GCA, and the ATF decided to revoke Cook’s license. Cook requested a hearing to review the revocation, and on January 14, 2003, the ATF held an administrative hearing in Richmond, Virginia. The hearing officer found that

¹The ATF had inspected Hassett Gun Supply on prior occasions and had discovered similar violations.

Cook had willfully violated the GCA and upheld the decision to revoke Cook's license. Cook then filed the present petition. Cook claims to now have records of sale or other proof of disposition for all 147 firearms the ATF classified as missing during the 2001 compliance inspection.

II.

Pursuant to 18 U.S.C. § 923(e), the ATF may revoke a firearm dealer's license if the license holder willfully violates any statute or regulation governing the firearm industry. Furthermore, "a single violation is sufficient for . . . revoking a license." DiMartino v. Bradley, 129 F. Supp. 2d 824, 827 (D. Md. 2001). Under 18 U.S.C. § 923(f)(3), Cook is entitled to a de novo judicial review in federal district court of the ATF's decision to revoke his dealer license. The court may consider any evidence submitted by the parties regardless of whether the evidence was submitted during the administrative proceeding. 18 U.S.C. § 923(f)(3). "The reviewing court can grant summary judgment without conducting an evidentiary hearing if no genuine issue of material fact exists." DiMartino, 129 F. Supp. 2d at 827; T.T. Salvage Auction Co. v. U.S. Treasury Dep't, 859 F. Supp. 977, 979 (E.D.N.C. 1994).

18 U.S.C. § 923(g)(1)(A) requires all federally licensed firearm dealers to maintain records of sale as required by the Attorney General. Similarly, 18 U.S.C. § 922(m) makes it unlawful for a firearm dealer "to fail to properly maintain[] any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder." 27 C.F.R. § 478.125(e)² requires that "[t]he sale or other disposition of a firearm shall be recorded by the licensed dealer not later than 7

²Formerly 27 C.F.R. § 178.125(e).

days following the date of such transaction.” Finally, 27 C.F.R § 478.121(c)³ also requires firearms dealers to keep records of firearms dispositions.

III.

Cook claims the ATF improperly attempted to revoke his license for two reasons. First, Cook argues that his violations were not willful. Second, Cook claims a five year statute of limitation applies to his license forfeiture proceeding. However, the court finds that even when using Cook’s definition of willful, the uncontroverted evidence presented by Herbert establishes a willful violation within the past five years. Consequently, Cook’s arguments are meritless.

Cook characterizes his errors as inadvertent or technical and therefore not willful, and defines willful as acting “intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or disregard the law.” Bryan v. United States, 524 U.S. 184, 190 (1998). However, the uncontested evidence presented by Herbert establishes that the ATF explained the record-keeping requirements to Cook during the warning conference, informed him that his A & D book failed to satisfy these requirements, and suggested corrective measures. Nevertheless, though, during the next year Cook failed to correct his A & D Book and also failed to record fifteen firearms sold after the warning conference. Cook’s refusal to correct his A & D Book despite notice from the ATF that the book contained errors, and Cook’s continued failure to record the disposition of firearms cannot be characterized as mere inadvertence. Rather, the facts clearly establish that Cook intentionally violated a known legal duty. Thus, this court finds that Cook acted with the purpose to disobey the law

³Formerly 27 C.F.R § 178.121(c)

and therefore acted willfully pursuant to Cook's own definition.

Furthermore, Cook's statute of limitations argument is inapplicable to these violations. The uncontested evidence establishes that at least some of the relevant firearms sales have occurred in the past five years. Cook does not even raise the statute of limitations as a defense to the charge that he failed to record the disposition of the 147 missing firearms in his petition. Consequently, the statute of limitations issue is irrelevant.

Finally, the fact that Cook now claims to have sales receipts for all 147 missing firearms is also irrelevant because Cook failed to properly record the dispositions in his A & D Book as required by the applicable statutes and regulations. Therefore, it is now too late for Cook to attempt to document his firearm sales.

IV.

Because the uncontested evidence establishes that Cook committed a willful violation of the statutes and regulations governing the firearms industry within the past five years, this court grants Herbert's motion and dismisses the petition.

ENTER: This _____ day of January, 2004.

CHIEF UNITED STATES DISTRICT JUDGE

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ARTHUR W. HERBERT,)	
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In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that the respondent's motion for summary judgment is **GRANTED**. This case is **STRICKEN** from the active docket of the court.

ENTER: This _____ day of January, 2004.

CHIEF UNITED STATES DISTRICT JUDGE